

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

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**IN THE MATTER OF**

**PETITION FOR RULEMAKING TO DEFINE “CAPTURED”  
AND “NEW” SUBSCRIBER LINES FOR PURPOSES OF  
RECEIVING UNIVERSAL SERVICE SUPPORT,  
PURSUANT TO 47 C.F.R. § 54.307 *ET SEQ.***

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**RM-10522**

**COMMENTS BY  
THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.  
IN SUPPORT OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION’S  
PETITION FOR EXPEDITED RULEMAKING**

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September 23, 2002

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Pursuant to Section 1.401 of the Federal Communications Commission’s (Commission or FCC) rules, the New York State Telecommunications Association, Inc. (NYSTA) hereby submits these Comments in support of the Petition for Expedited Rulemaking (Petition) of the National Telecommunications Cooperative Association (NTCA).<sup>1</sup>

NYSTA is a non-profit association incorporated in 1921 whose membership

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<sup>1</sup> See: National Telecommunications Cooperative Association, *Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to*

encompasses the carriers operating in New York State, including all 38 of the state's rural incumbent local exchange carriers. From time to time, NYSTA advocates positions on behalf of our membership to seek resolution of a regulatory issue to their benefit. Accordingly, we are hereby informing the Commission of our support for NTCA's Petition.

NYSTA has a direct interest in the resolution of the issues raised in NTCA's Petition because most of our members provide service in rural, high-cost areas throughout the State of New York. These companies have invested in necessary facilities to fulfill their obligations to serve consumers in their franchised areas and have received numerous commendations from our state Commission for excellence in service quality.<sup>2</sup> However, the continued viability of federal Universal Service support is critical to ensure these services will always be provided to rural, high-cost customers.

In its Petition, NTCA requested that a focused proceeding be initiated to adopt interim measures needed to prevent erosion of Universal Service in rural, insular, and high cost areas. The Commission should grant NTCA's petition and promptly initiate a rulemaking to adopt the rules that NTCA proposes.

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*47 CFR §54.307 et. seq.*, filed July 26, 2002. (NTCA Petition)

<sup>2</sup> See: e.g., *Order* in the proceeding involving the quality of telephone service provided by local exchange companies in New York State during calendar year 2001, Case 01-C-0491 (Issued February 22, 2002).

Specifically, NTCA asked the Commission to define terms used in 47 CFR § 54.307, which was enacted in 1997.<sup>3</sup> When the Commission adopted the rule, it stated that it intended to provide support to competitive eligible telecommunications carriers (CETCs) that *captured*, or replaced, the service of the incumbent or provided service to *new* customers.<sup>4</sup> Unfortunately, the Commission did not define the terms “captured” or “new.”

As a result, support is being provided to CETCs that file loop counts with the Universal Service Administration Company without any indication of whether customers served by these loops are indeed new customers or captured customers who do not continue to receive service from the incumbent.<sup>5</sup> Additionally, according to NTCA, CETCs that have no loops are only required to file the total number of customers within a service area to receive support.

The current regime creates and encourages duplicative support which is contrary to the Telecommunications Act’s goals of Universal Service.<sup>6</sup>

The FCC’s rules providing for “identical support” to competitors were based on the theory that these rules would promote “competitive neutrality,” an additional Universal

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<sup>3</sup> NTCA Petition at p. 2.

<sup>4</sup> NTCA Petition at pp. 5-6.

<sup>5</sup> NTCA Petition at p. 3.

<sup>6</sup> *See, e.g.*, 47 USC §254.

Service principle adopted by the Commission in 1997 but not included in the Telecom Act,<sup>7</sup> even though the incumbent's costs are most likely higher than the CETC's costs. The rules, however, have had the opposite effect: They have created unfair competitive advantages for CETCs and have imposed an undue burden on the public in the process.<sup>8</sup>

Today, "competitive neutrality" is a fiction because CETCs do not have the carrier of last resort obligations that are imposed on incumbent local exchange carriers (ILECs). Moreover, as NTCA presented in its Petition, wireless CETCs receiving the same support as ILECs are often held to a different service quality standard than that of ILECs and they do not have equal access obligations as do the ILECs.<sup>9</sup> NYSTA agrees with NTCA that in the long run, the consumer will not benefit from rules which view high cost and access support as opportunities to create competition instead of sustaining affordable and comparable service in rural, high-cost, and insular areas.

The escalating support to CETCs demonstrates that an expedited proceeding is needed to address the distortions that are created by the gaps in the Commission's rules.

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<sup>7</sup> *First Report and Order* in the Federal-State Joint Board on Universal Service proceeding, CC Docket No. 96-45, FCC 97-157 (Released May 8, 1997), at p. 16. (*First Report and Order*).

<sup>8</sup> See, e.g., *Petition for Declaratory Judgment* filed by ACS of Fairbanks, Inc. on July 24, 2002 in CC Docket No. 96-45 which demonstrates how a CLEC that acquires unbundled network elements at Total Element Long Run Incremental Cost (TELRIC) prices obtains a windfall when it gets support based on the incumbent's cost.

<sup>9</sup> NTCA Petition, at p. 9.

When the “identical support” rule was adopted in 1997, the FCC stated its belief that CETCs would have to “win” a line before obtaining support. In that decision, the FCC held that, “[w]e conclude that paying the support to a CLEC that wins the customer’s lines or adds new subscriber lines would aid the emergence of competition.”<sup>10</sup> The FCC also thought that competitive neutrality would be furthered because the states would only designate CETCs in service areas where they would in fact provide service.<sup>11</sup> The Commission believed that CETCs could not gain competitive advantages by serving only low cost areas while gaining high cost support. This belief has been proven wrong.

CETCs can still choose to serve only lower costs customers since the FCC has held that there is no requirement that CETCs actually serve customers before being certified and they need only advertise throughout the entire service area.<sup>12</sup> While New York State has not authorized CETCs to operate in any of the Independent, rural carrier territories to date, it also has not imposed measures to prevent low cost competitors from taking advantage of the rules.<sup>13</sup>

Accordingly, NYSTA supports the following changes advocated by NTCA which

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<sup>10</sup> *First Report and Order*, at p. 157

<sup>11</sup> *Id.*, at p. 158.

<sup>12</sup> *Id.*, at p. 158.

<sup>13</sup> The New York State Public Service Commission has granted CETC status to about a half dozen carriers, but each of these authorizations were specifically limited to Verizon’s service territory. *See, e.g., Order Approving Petition of MCImetro Access Transmission Services, Inc. as an Eligible Carrier for Universal*

are intended to define “captured” and “new” as used in existing rules:

#### **47 CFR §54.5 Terms and Definitions.**

**Captured Subscriber Lines.** As used in 47 CFR §54.307(a), a CETC captures an existing incumbent LEC subscriber line when the incumbent LEC no longer provides the subscriber with the services defined in 47 CFR §54.101. When a subscriber takes service from a CETC but continues receiving the services defined in 47 CFR §54.101 from the incumbent LEC, the CETC has not captured the incumbent LEC subscriber’s line for purposes of receiving support.

**New Subscriber Lines.** As used in 47 CFR §54.307(a), service to a new subscriber line means services defined in 47 CFR §54.101 provided by a CETC to a subscriber that has not previously received 47 CFR §54.101 services from the incumbent LEC operating in the service area.

**Customer Billing Address.** As used in 47 CFR §54.307(b), (c) and (d), a customer billing address includes the customer’s full name, the customer’s complete mailing address used for billing purposes, and the date the customer began receiving service from a CETC or incumbent LEC.

In addition, NYSTA supports the addition of a new 47 CFR §54.307(d):

#### **47 CFR §54.307 Support to a Competitive Eligible Telecommunications Carrier.**

**47 CFR §54.307(d), *Duplicative Support Prevention.*** In circumstances where the incumbent LEC and one or more CETCs are reporting working loops in the incumbent LEC’s service area pursuant to paragraphs (b) and (c), the Administrator, upon the written request of the incumbent LEC, the CETC, or pursuant to its own authority, shall initiate an investigation to determine whether more than one carrier is receiving support for the same subscriber, or subscribers, at the same time. As part of the investigation, the Administrator shall require the incumbent LEC and CETCs to file, under a protective order, a report listing the customer billing address for each working loop reported to the Administrator pursuant to paragraphs (b) and (c). The customer billing address reports shall be filed in alphabetical order by customer last name within 10 business days after issuance of a written

request from the Administrator. As part of the investigation, the Administrator will compare the customer names, addresses, and dates of service for each working loop filed by carrier to determine whether support is being distributed to more than one provider for the same customer simultaneously. If the Administrator determines that any CETC-reported working loop does not meet the definition of “captured” or “new,” it shall discontinue support for those CETC working loops and take other appropriate measures to avoid duplication of support.

NYSTA is aware of the enormity of the current situation and that the opportunity to take advantage of these loop holes in the FCC’s Rules may be too attractive for a CETC to resist. Unless the rules are modified to preserve the intent that the FCC had when it established the rules in 1997, continued requests for duplicative Universal Service support, if granted, will result in even further depletion of the support for every deserving party . FCC inaction on this matter will result in the Universal Service Fund growing far more exponentially than it would have if the loop holes did not exist, potentially causing massive changes to the entire Universal Service funding mechanisms and, ultimately, resulting in necessary funds being denied to those rural carriers that actually provide service to higher-cost-to-serve rural customers at the highest quality. Accordingly, NYSTA believes that the long-term sustainability of the Universal Service Fund will be promoted by enactment of NTCA’s proposed changes.



For the above-stated reasons, NYSTA urges the Commission to grant NTCA's petition.

Respectfully submitted,

**NEW YORK STATE  
TELECOMMUNICATIONS ASSN, INC.**

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